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December 18, 2008

VIA FACSIMILE and FIRST CLASS MAIL

Mr. Jeff S. Jordan
Federal Election Commission
Office of the General Counsel
999 E Street, NW
Washington, DC 20463

**Re: MUR 6110 - Democratic National Committee and Obama Victory Fund,
Respondents**

Dear Mr. Jordan:

This letter is in response to your correspondence regarding the Complaint filed in the above-referenced MUR. The allegations against the DNC Services Corporation/Democratic National Committee (DNC) and the Obama Victory Fund (OVF) are without merit and no action should be taken against either the DNC, OVF or Treasurer Andrew Tobias.

The Complaint was filed by the District of Columbia Republican Committee (DCRC). The Complaint alleges that the DNC and OVF violated the Federal Election Campaign Finance Act and the Commission's regulations "on at least two separate occasions by accepting prohibited corporate in-kind contributions and failing to include the proper solicitation disclaimers." Complaint at 1.

The DNC is a national party committee, as defined by 11 C.F.R. § 100.5(e)(4). OVF is a joint fundraising committee, established pursuant to 11 C.F.R. § 102.17, whose participants are the DNC and Obama for America (OFA), the principal campaign committee of President-Elect Barack Obama, as defined by 11 C.F.R. § 100.5(e)(1).

VIDA Fitness Event

On September 26, 2008, the DNC's Gay and Lesbian Leadership Council (GLLC) hosted a fundraiser to benefit OVF at VIDA Fitness, a fitness center in Washington, D.C. Declaration of Thomas Petrillo (Petrillo Dec.) ¶ 3, attached hereto as Exhibit 1. An

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Not authorized by any candidate or candidate's committee.

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invitation to the event was sent by the DNC via e-mail to approximately 500 Lesbian, Gay, Bisexual and Transgendered (LGBT) donors in the metropolitan Washington, DC area. Petrillo Dec. ¶ 5. A copy of the invitation, which contains the joint fundraising notice required by the Commission's regulations at 11 CFR § 102.17(c)(2), is attached as Exhibit A to Petrillo Dec.

Without the prior knowledge or authorization of the DNC, OVF, or any staff member thereof, the owner of VIDA Fitness, David von Storch, sent an e-mail regarding the September 26, 2008 event to the VIDA Fitness e-mail list, as well as the e-mail list of Bang, a hair salon also owned by Mr. Von Storch. Petrillo Dec. ¶ 7. The e-mails sent by Mr. von Storch contained many of the same details regarding the September 26 event, but were not official invitations to the event. The e-mails differed from the official invitation in many respects. Although the e-mails did not include the Commission's required joint fundraising notice, they did contain a hyperlink to the official event page which did contain the required disclaimers. Copies of those e-mails are attached as Exhibits B and C to the Complaint.

The Complaint alleges that the DNC and OVF violated FECA and Commission regulations because the sending of the e-mail to the VIDA Fitness and Bang e-mail lists constitutes a prohibited in-kind corporate contribution in violation of 2 U.S.C. § 441(b)(a); 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. § 100.52(d)(1). Complaint at 2. The Complaint further alleges that because "it appears, that OVF did not pay VIDA and Bang for the email communication, then OVF has accepted a prohibited corporate in-kind contribution." *Id.*

Of course, neither the DNC nor OVF ever knowingly accepted a prohibited corporate in-kind contribution from either VIDA Fitness or Bang. At no time did the DNC or OVF ever request either the VIDA Fitness or Bang e-mail list, and at no time were those lists ever provided to OVF, the DNC or any staff members thereof. Petrillo Dec. ¶ 8. Mr. von Storch is a volunteer fundraiser who sent the e-mail to the lists without the prior approval or authorization of either OVF or the DNC. *Id.* ¶ 7. In sending the e-mail, Mr. von Storch was not acting as an agent of either OVF or the DNC because he lacked the actual authority, either express or implied, required under 11 C.F.R. § 300.2(b) to solicit contributions on behalf of the DNC or OVF. *See also* 11 C.F.R. § 109.3(a).

Indeed, the Commission's Explanation & Justification for the definition of "Agent" found at 11 C.F.R. § 300.2(b), states that a party committee cannot be held liable for the actions of a "volunteer who purported to act on behalf of the committee, unless the committee's own written or spoken word, or other conduct, caused the volunteer to reasonably believe that the committee desired him or her to so act." 67 Fed. Reg. 49,083 (2002). Because neither the DNC nor OVF ever asked Mr. von Storch to send the e-mail regarding the September 26 event to the VIDA Fitness and Bang e-mail lists, or acted in any way that would have caused him to reasonably believe that the DNC or OVF desired him to send the e-mail to the lists, he lacked the authority, either actual or implied, to act on behalf of either the DNC or OVF and neither should be held liable for his actions.

Notwithstanding the fact that neither the DNC or OVF requested the sending of this e-mail, it is our understanding that Mr. von Storch paid \$3,000 for the use of the VIDA Fitness e-mail list

Since the use of an email list is not a "public communication," as defined by Commission regulations, it is our understanding that neither Mr. von Storch, nor the DNC or OVF is required to disclose the dissemination of the e-mail as an in-kind contribution to OVF or the DNC. 11 C.F.R. § 109.21. However, at the request of Mr. von Storch, OVF will disclose an in-kind contribution, in the amount of \$3,000 from Mr. von Storch for his reimbursement to VIDA Fitness for the use of the e-mail list.

Concert for Change Event

The Complaint also alleges that "individuals associated with 'A Concert for Change' (the "Concert") distributed flyers near Eastern Market Metro in Washington, DC and posted yard signs promoting the event in the Eastern Market area." Complaint at 3. The Complaint states that the concert "organizers also promoted the event on OFA's and the DNC's social networking sections of their websites." *Id.* Finally, the Complaint states that the concert's promotional materials "contain the logos of three corporations – Square Root Sales, Senate Realty, and M&A Development" implying "some sort of corporate sponsorship connection" and that "[n]one of the promotional materials contain disclaimers for nor joint fundraising notices."

Neither the DNC nor OVF ever hosted a "Concert for Change" fundraising event. While the promotional materials for the event state that the proceeds would benefit the DNC or OVF, the event was not an official or authorized DNC or OVF event and was plainly conducted without the knowledge or cooperation of DNC or OVF. That the event was publicized on the social networking sections of the DNC and OFA websites does not transform an otherwise unauthorized event into an official, sanctioned DNC or OVF event. To the contrary, the DNC's social networking system, known as Party Builder, is an entirely user controlled peer-to-peer platform. The DNC does not pre-screen or otherwise review what appears on the Party Builder pages.

Because the "Concert for Change" event was conducted without the knowledge or approval of the DNC or OVF and was not an officially sanctioned event, neither the DNC nor OVF accepted any prohibited corporate in-kind contributions in violation of 2 U.S.C. § 441b(a) or 11 C.F.R. § 100.52(d)(1), nor can the lack of a joint fundraising notice on the concert's promotional materials be attributed to the DNC or OVF. That the invitation to the "Concert for Change," an event neither the DNC nor OVF knew anything about included the logos of three corporations that may or may not have provided financial support for the event simply does not present any credible evidence that the DNC or OVF knowingly accepted any prohibited in-kind corporate contributions, and accordingly, no action should be taken against either the DNC, OVF or Treasurer Andrew Tobias.

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Given the circumstances described herein, the DNC and OVF respectfully request that the Counsel's Office either immediately dismiss the complaint as it pertains to the DNC and OVF, or, in the alternative, consider referring this matter to the Commission's ADR process. By this written request, the DNC and OVF agree to the Commission's terms for participation in the ADR process and agree to participate fully in the process should the Commission decide to pursue this matter. While the DNC and OVF understand that such referral is not automatically granted, they believe that the circumstances described herein warrant such a referral.

Sincerely,



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